

Message Text

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TO AMEMBASSY BRUSSELS

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SUBJECT: TAXATION DIFFICULTIES WITH BELGIAN GOVERNMENT

REF: STATE 82023

PER REFTEL THE LEGAL POSITION OF USG IS CONTAINED IN
FOLLOWING NOTE WHICH EMBASSY IS AUTHORIZED TO DELIVER
TO GOB. BEGIN NOTE:

THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS
ITS COMPLIMENTS TO THE MINISTRY OF FOREIGN AFFAIRS AND
HAS THE HONOR TO REFER TO DISCUSSIONS WHICH HAVE TAKEN
PLACE BETWEEN THE AUTHORITIES OF OUR TWO GOVERNMENTS
CONCERNING THE IMPOSITION OF THE BELGIAN TAXE A LA
VALEUR AJOUTEE (TVA) ON EXPENDITURES MADE BY THE US
FORCES FOR UTILITIES AND MAINTENANCE SERVICES ON LIVING
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QUARTERS LEASED BY THE NATO SHAPE SUPPORT GROUP IN

BELGIUM. IN RECENT WEEKS, THE DISCUSSIONS ON THE BELGIUM SIDE HAVE BEEN LED BY AMBASSADOR VERWILGHEN, PRESIDENT OF CISHIC.

THE FACILITIES IN QUESTION CONSIST OF SOME 17 SETS OF POSITION-TYPE QUARTERS, AND 16 APARTMENTS FOR ENLISTED BACHELOR PERSONNEL IN BRUSSELS. THE BELGIAN TVA ADMINISTRATION HAS TAKEN THE POSITION THAT THE TVA TAXES SHOULD BE PAID FOR MAINTENANCE AND UTILITIES SERVICE RENDERED BY BELGIAN CONTRACTORS FOR THESE FACILITIES. ON APRIL 11, 1975, THE UNITED STATES GOVERNMENT AUTHORIZED, UNDER THREAT OF ELECTRICITY CUT-OFF, PAYMENT OF THE APPROPRIATE TAX AMOUNTS TO ELECTOGAZ UNDER PROTEST.

THE EMBASSY IS AWARE OF THE DISTINCTION MADE BY THE TVA ADMINISTRATION BETWEEN THE USE OF FACILITIES FOR OFFICIAL AND PRIVATE PURPOSES. WE UNDERSTAND THAT THE EXEMPTION FROM TAXES CONTAINED IN ARTICLE 42, PARAGRAPH 2 OF THE TVA LAW APPLIES ONLY TO SUPPLIES OF SERVICES FOR THE "OFFICIAL USE" OF THE FORCES OF FOREIGN STATES. ALTHOUGH WE FEEL THAT THESE SERVICES ARE FOR THE "OFFICIAL USE" OF US FORCES, WE DO WISH TO POINT OUT THAT THE CITED BELGIAN LAW IS NOT CONTROLLING IN THE PRESENT CASE. TAX MATTERS INVOLVING THE EXPENDITURE OF US APPROPRIATED FUNDS IN BELGIUM ARE GOVERNED BY THE MEMORANDUM ON RELIEF FROM TAXES AND DUTIES OF 1952, WHICH INCLUDES A TEST FOR EXEMPTION SIGNIFICANTLY DIFFERENT FROM THE BELGIAN STATUTE. THE FIRST UNNUMBERED PARAGRAPH OF THE TAX RELIEF AGREEMENTS STATES THE FOLLOWING:

"DISCUSSIONS HAVE RECENTLY TAKEN PLACE BETWEEN THE GOVERNMENTS OF BELGIUM AND THE UNITED STATES OF AMERICA RELATING TO FISCAL ARRANGEMENTS APPLICABLE TO EXPENDITURES IN BELGIUM BY THE GOVERNMENT OF THE UNITED STATES FOR EQUIPMENT, MATERIALS, FACILITIES AND SERVICES FOR THE COMMON DEFENSE . . . THE GOVERNMENT OF BELGIUM AGREES WITH THE PRINCIPLE THAT RELIEF FROM TAXES AND DUTIES WILL BE ACCORDED TO THE LIMITED OFFICIAL USE

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ABOVE EXPENDITURES . . ."

AS THE LANGUAGE INDICATES, THE TEST FOR TAX EXEMPTION IS WHETHER IN A PARTICULAR CASE THE UNITED STATES MADE EXPENDITURES IN BELGIUM FOR THE "COMMON DEFENSE."

WITH REGARD TO THE LEASED MILITARY QUARTERS IN

QUESTION THE UNITED STATES GOVERNMENT BELIEVES THIS TEST HAS BEEN MET. THE OCCUPANTS OF THESE QUARTERS DO NOT RECEIVE THE CUSTOMARY HOUSING ALLOWANCE, AND ARE BY UNITED STATES LAW ENTITLED TO RENT-FREE OCCUPANCY, INCLUDING ELECTRICITY, GAS, AND WATER. ALL FACILITY COSTS ARE RELATED TO THE UNITED STATES ROLE IN NATO AND ARE PAID OUT OF FUNDS APPROPRIATED FOR THE DEPARTMENT OF DEFENSE BY THE CONGRESS OF THE UNITED STATES. THERE SHOULD BE NO DOUBT SUCH EXPENDITURES

ARE IN THE "COMMON DEFENSE." THE DISTINCTION HERE IS NOT BETWEEN OFFICIAL USE VERSUS PRIVATE USE. THESE TERMS ARE NOT EMPLOYED IN THE TAX RELIEF AGREEMENT. RATHER, THE TEST FOR EXPENDITURES IN THE "COMMON DEFENSE" IS WHETHER A PARTICULAR EXPENDITURE ENABLES THE UNITED STATES TO FULFILL ITS OBLIGATIONS UNDER THE NORTH ATLANTIC TREATY. IN THIS SENSE THERE IS NO SUBSTANTIVE DIFFERENCE BETWEEN U.S. EXPENDITURES FOR HOUSING AND THOSE, FOR EXAMPLE, FOR THE AFN TRANSMITTER SITE, FOR WHICH BELGIUM AUTHORITIES HAVE AGREED TVA TAXES SHOULD NOT BE IMPOSED. CERTAINLY, IT CANNOT BE SERIOUSLY QUESTIONED THAT THE UNITED STATES WOULD BE UNABLE TO FULFILL ITS NATO OBLIGATIONS IF IT DID NOT PROVIDE HOUSING FOR ITS MILITARY FORCES.

NOR CAN THERE BE ANY QUESTION THAT THE TAX RELIEF AGREEMENT PROVISIONS ARE IN HARMONY WITH THOSE OF THE NATO STATUS OF FORCES AGREEMENT. ARTICLE 7 OF THE FORMER AGREEMENT REMOVES ANY DOUBT ON THIS POINT. IT READS AS FOLLOWS: "THIS MEMORANDUM IS NOT INTENDED TO AFFECT TAX RELIEF PROVIDED BY THE GOVERNMENT OF BELGIUM IN ACCORDANCE WITH EXISTING ARRANGEMENTS AND AGREEMENTS, SUCH AS THE MUTUAL DEFENSE ASSISTANCE AGREEMENT OF JANUARY 27, 1950, NOR IS IT INTENDED THAT THE AGREEMENT LIMITED OFFICIAL USE

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SIGNED IN LONDON ON JUNE 19, 1951, ON THE STATUS OF NATO FORCES SHOULD AFFECT THE UNDERSTANDINGS CONTAINED IN THIS MEMORANDUM." THE UNITED STATES GOVERNMENT IS SERIOUSLY CONCERNED WITH THE POSITION TAKEN BY AMBASSADOR VERWILGHEN REGARDING THE TAX RELIEF AGREEMENT. IN HIS VIEW THAT AGREEMENT WAS TEMPORARY IN NATURE AND HAS BEEN OVERTAKEN BY THE NATO STATUS OF FORCES AGREEMENT, WHICH CAME INTO FORCE FOR BELGIUM IN 1953.

THE UNITED STATES GOVERNMENT STRONGLY OPPOSES THIS POSITION. THERE IS NOTHING IN THE BROAD LANGUAGE OF THE TAX RELIEF AGREEMENT OR THE NEGOTIATING HISTORY OF THE AGREEMENT INDICATING ITS TEMPORARY DURATION OR CONFIRMING ITS APPLICATION SOLELY TO MATTERS RELATED TO THE MILITARY ASSISTANCE PROGRAM. IF THIS WERE TRUE THE AGREEMENT

WOULD NOT HAVE BEEN CITED BY THE TWO GOVERNMENTS IN THE CONFIDENTIAL ANNEX TO THE DEFENSE COMMUNICATIONS FACILITIES AGREEMENT OF APRIL 19, 1963 (ARTICLE I), AND THE LINE OF COMMUNICATIONS AGREEMENT OF 16 AND 19 JULY 1971 (PREAMBLE). THESE TWO AGREEMENTS CAME INTO FORCE 11 AND 21 YEARS, RESPECTIVELY, AFTER THE TAX RELIEF AGREEMENT ITSELF. FURTHERMORE, THESE AGREEMENTS CONCERN

BASE OPERATING RIGHTS OF THE UNITED STATES FORCES, NOT PROGRAMS OF MILITARY ASSISTANCE.

THE IMPACT OF THE BELGIAN POSITION WITH RESPECT TO LINE OF COMMUNICATIONS (LOC) MATTERS HAS BEEN UNFORTUNATE. AS EARLY AS 1973, REPRESENTATIVES OF THE BELGIAN MINISTRY OF DEFENSE ASSERTED THAT THE TAX RELIEF AGREEMENT DOES NOT APPLY TO LOC ACTIVITIES. BECAUSE OF THIS MILITARY LEVEL NEGOTIATIONS ON A LOC PROCUREMENT AGREEMENT HAVE COME TO A STANDSTILL. IN VIEW OF THE IMPORTANCE OF THIS ISSUE TO ALL UNITED STATES ACTIVITIES IN BELGIUM, THE EMBASSY REQUESTS THAT THE FOREIGN MINISTRY REVIEW THIS MATTER ONCE AGAIN IN ORDER TO AFFIRM THAT THE PROVISIONS OF THE TAX RELIEF AGREEMENT OF 1952 CONTINUE TO APPLY TO UNITED STATES MILITARY ACTIVITIES IN BELGIUM.

THE EMBASSY WOULD ALSO APPRECIATE IT IF THE MINISTRY WOULD TAKE THE NECESSARY STEPS SO THAT THE MILITARY LIMITED OFFICIAL USE

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QUARTERS, LEASED BY THE NATO SHAPE SUPPORT GROUP, WOULD BE EXEMPTED FROM THE APPLICATION OF ALL TVA TAXES. IF THE MINISTRY SHOULD SO DESIRE, THE EMBASSY IS PRE-PARED TO ENGAGE IN THE BILATERAL DISCUSSIONS PROVIDED FOR UNDER ARTICLE 5 OF THE AGREEMENT OF APRIL 7, 1952, IN ORDER TO ARRIVE AT A MUTUALLY ACCEPTABLE UNDERSTANDING.

THE EMBASSY OF THE UNITED STATES OF AMERICA TAKES THIS OCCASION TO RENEW TO THE MINISTRY OF FOREIGN AFFAIRS THE ASSURANCES OF ITS HIGHEST CONSIDERATION.

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